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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,729	07/02/2003	Kevin T. Chan	14227US01	5781
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MCANDREWS HELD & MALLOY, LTD			DAVENPORT, MON CHERIS	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/612,729	CHAN, KEVIN T.
	Examiner	Art Unit
	Mon Cheri S. Davenport	2609

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-30 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-30 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

This Office Action is in response to the amendment filed April 26, 2007.

### ***Specification***

Previous objection of specification is withdrawn in view of Applicant's amendment filed April 26, 2007.

### ***Claim Rejections - 35 USC § 101***

Previous rejection under 35 USC 101 is withdrawn in view of Applicant's amendment filed April 26, 2007.

### ***Double Patenting***

Previous nonstatutory double patenting rejection is withdrawn in view of Applicant's terminal disclaimer filed April 26, 2007.

### ***Terminal Disclaimer***

1. The terminal disclaimer filed on April 26, 2007 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of any patent granted on Application Number 10/612,729 reviewed and is accepted. The terminal disclaimer has been recorded.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 1-30** rejected under 35 U.S.C. 102(b) as being anticipated by Bontemps et al. (US Patent Number 5,923,663).

It is noted that the language used by Applicant merely suggests or makes optional those features described as "capable of" or "adapted to"; such language does not require steps to be performed nor limits the claim to a particular structure. *In re Hutchison*, 69 USPQ 138. See MPEP 2111.04.

Regarding **Claim 1** Bontemps et al. discloses a method for providing and configuring communication links, the method comprising:

determining any one usable media pair from all existing media pairs(*see figure 2, element 220a and 220b, contact pair*) (*see abstract, lines 1-3*);

selecting any one channel from all existing channels(*see figure 2, element 202, port1-N*) (*see column 3, lines 58-61*); and

assigning said selected any one channel to said any one media pair(*see column 3, lines 58-62, A control circuit is provided that toggles the selected circuit between the first and second states until a link detect signal indicates the reception of communication signals. The control circuit holds the select circuit in the particular state in which valid communication signals were detected*).

**Claims 11 and 21** are the corresponding machine-readable storage and system claims for the above-mentioned claim and are thus rejected under same rationale.

Regarding **Claim 2**, Bontemps et al. discloses everything as claimed above (see claim 1). In addition, the method includes:

wherein said determining further comprises monitoring at least said any one usable media pair(*see column 3, lines 50-52, the physical layer device monitors its receive input for transmitted communication signals and provided a link detect signal indicative thereof*).

**Claims 12 and 22** are the corresponding machine-readable storage and system for the above-mentioned claim and are thus rejected under same rationale.

Regarding **Claim 3**, Bontemps et al. discloses everything as claimed above (see claim 2). In addition, the method includes:

wherein said monitoring further comprises detecting an existence of a communication signal on said any one usable media pair(*see column 5, lines 31-36, physical layer device (second device), monitoring for communication signals in each of the first and second states of the select logic until valid communication signals are detected, and holding the select logic in one of the first and second*

**states in which a link detect signal indicates detection of valid communication signals).**

**Claims 13 and 23** are the corresponding machine-readable storage and system for the above-mentioned claim and are thus rejected under same rationale.

Regarding **Claim 4**, Bontemps et al. discloses everything as claimed above (see claim 1). In addition, the method includes:

    further comprising determining which one of said all existing media pairs is capable of facilitating communication at a maximum communication speed (see **column 4, lines 6-14, a combination of protocols is also contemplated, the ports may include a first set of ports 10based-T and a second 100Base-TX**).

**Claims 14 and 24** are the corresponding machine-readable storage and system for the above-mentioned claim and are thus rejected under same rationale.

Regarding **Claim 5**, Bontemps et al. discloses everything as claimed above (see claim 4). In addition, the method includes:

    further comprising cross-connecting said selected any one channel to said one of said all existing media pairs capable of facilitating communication at a maximum communication speed (see **column 6, line 60- column 7, line 6, each PHY device of each ports would include a crossover function**).

**Claims 15 and 25** are the corresponding machine-readable storage and system for the above-mentioned claim and are thus rejected under same rationale..

Regarding **Claim 6**, Bontemps et al. discloses everything as claimed above (see claim 1). In addition, the method includes:

    further comprising determining which one of said all existing media pairs is capable of operating at a reduced communication speed (see **column 4, lines 6-14, a combination of protocols is also contemplated, the ports may include a first set of ports 10based-T and a second 100Base-TX**).

**Claims 16 and 26** are the corresponding machine-readable storage and system for the above-mentioned claim and are thus rejected under same rationale.

Regarding **Claim 7**, Bontemps et al. discloses everything as claimed above (see claim 6). In addition, the method includes:

    further comprising cross-connecting said selected any one channel to said one of said all existing media pairs capable of operating at said reduced communication speed (see **column 6, line 60- column 7, line 6, each PHY device of each ports would include a crossover function**).

**Claims 17 and 27** are the corresponding machine-readable storage and system for the above-mentioned claim and are thus rejected under same rationale.

Regarding **Claim 8**, Bontemps et al. discloses everything as claimed above (see claim 1). In addition, the method includes:

further comprising:

flipping at least one of a channel(*see figure 2, element 202, port1-N*) and a media pair(*see figure 2, element 220a and 220b, contact pair*) assignment of a previously defined general channel and media pair configuration which defines channel and media pair assignments for at least a portion of said all existing media pairs(*see column 4, lines 62-65*); and

defining said flipped at least one said channel and said media pair assignment as a default channel and media pair configuration(*see column 4, lines 62-65, the physical layer device to the appropriate contacts of the ports connector for performing a straight-through connection in one state (first combination) and a crossover connection in another state( second combination)*).

**Claims 18 and 28** are the corresponding machine-readable storage and system for the above-mentioned claim and are thus rejected under same rationale.

Regarding **Claim 9**, Bontemps et al. discloses everything as claimed above (see claim 1). In addition, the method includes:

further comprising identifying a status of at least one of said all existing media pairs and at least one of said all existing channels( *see column 3, lines 50-52, the physical layer device monitors its receive input for transmitted communication signals and provided a link detect signal indicative thereof*).

**Claims 19 and 29** are the corresponding machine-readable storage and system for the above-mentioned claim and are thus rejected under same rationale.

Regarding **Claim 10**, Bontemps et al. discloses everything as claimed above (see claim 9). In addition, the method includes:

further comprising storing said identified status( *see column 3, lines 50-52, the physical layer device monitors its receive input for transmitted communication signals and provided a link detect signal indicative thereof*).

**Claims 20 and 30** are the corresponding machine-readable storage and system for the above-mentioned claim and are thus rejected under same rationale.

***Response to Arguments***

4. Applicant's arguments filed April 26, 2007 have been fully considered but they are not persuasive.
5. Applicant argues that Bontemps does not disclose or suggest the limitation "determining any one usable media pair from all existing pairs" (see page 19, last paragraph).
6. In response, the Examiner respectfully disagrees and draws attention to the fact that Bontemps teaches that the control circuit determines which media pair (see ***column 3, lines 58-62, A control circuit is provided that toggles (determines) the selected circuit between the first and second states (media pairs) until a link detect signal indicates the reception of communication signals (from all existing media pairs). The control circuit holds the select circuit in the particular state in which valid communication signals were detected (determination of the one usable media pair).*** (See ***figure 2, element 220a and 220b, contact pair***) (see ***abstract, lines 1-3***). See also Figure 2, the control circuit decides which usable media pair is selected from the plurality of ports as shown.
7. In response to the argument that the each PHY device 218 in Fig. 2 of Bontemps is connected to only one RX/TX pair, it is noted that the PHY 218 device has more than one ports (PORT1-N) and the media pairs are shown in the figure, figure 2 as a whole is an automatic media detection circuit.

***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mon Cheri S. Davenport whose telephone number is 571-270-1803. The examiner can normally be reached on Monday - Friday 8:00 a.m. - 5:00 p.m. EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao can be reached on 571-272-3174. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2609

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MD/md  
May 25, 2007

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